

AMENDED IN ASSEMBLY JUNE 23, 2016

AMENDED IN ASSEMBLY JUNE 13, 2016

AMENDED IN SENATE MAY 26, 2016

AMENDED IN SENATE MAY 16, 2016

AMENDED IN SENATE MAY 10, 2016

AMENDED IN SENATE APRIL 26, 2016

AMENDED IN SENATE MARCH 28, 2016

## **SENATE BILL**

**No. 1150**

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**Introduced by Senators Leno and Galgiani  
(Coauthor: Senator Wieckowski)**

February 18, 2016

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An act to add Section 2920.7 to the Civil Code, relating to mortgages and deeds of trust.

### LEGISLATIVE COUNSEL'S DIGEST

SB 1150, as amended, Leno. Mortgages and deeds of trust: mortgage ~~servicers and lenders~~: *servicers*: successors in interest.

Existing law imposes various requirements to be satisfied prior to exercising a power of sale under a mortgage or deed of trust. Existing law gives a borrower, as defined, various rights and remedies against a mortgage servicer, mortgagee, trustee, beneficiary, and authorized agent in regards to foreclosure prevention alternatives, as defined, including loan modifications, which is commonly referred to as being part of the California Homeowner Bill of Rights. Existing law defines a mortgage servicer as a person or entity who directly services a loan,

or is responsible for interacting with the borrower, and managing the loan account on a daily basis, as specified.

This bill would prohibit a mortgage servicer, upon notification that a borrower has died, from recording a notice of default until the mortgage servicer does certain things, including requesting reasonable documentation of the death of the borrower from a claimant, who is someone claiming to be a successor in interest, who is not a party to the loan or promissory note and providing a reasonable period of time for the claimant to present the requested documentation. The bill would deem a claimant a successor in interest, as defined, upon receipt by a mortgage servicer of the reasonable documentation regarding the status of the claimant. The bill would require a mortgage servicer, within 10 days of a claimant being deemed a successor in interest, to provide the successor in interest with information about the loan, as specified. The bill would require a mortgage servicer to allow a successor in interest to ~~either assume the deceased borrower's loan or to apply for foreclosure prevention alternatives on an assumable loan to the extent permitted under state and federal law and the terms of the loan.~~ *loan, as specified.* The bill would provide that a successor in interest, as specified, who assumes an assumable loan and wishes to apply for a foreclosure prevention alternative has the same rights and remedies as a borrower under specified provisions of the California Homeowner Bill of Rights. The bill would authorize a successor in interest to bring an action for injunctive relief to enjoin a material violation of specified provisions of law and would authorize a court to award a prevailing successor in interest reasonable attorney's fees and costs for the action. The bill would define terms for these purposes and make various findings and declarations. *The bill would deem a mortgage servicer, mortgagee, or beneficiary of the deed of trust, or an agent thereof, to be in compliance with the above-described provisions if they comply with specified federal laws.* The bill would exempt specified depository institutions and persons from these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature hereby declares all of the  
2 following:

1 (a) Beginning in 2008, California faced a foreclosure crisis,  
2 with rapidly dropping home values and skyrocketing job losses.  
3 Indiscriminate foreclosure practices of major mortgage servicers  
4 compounded the problem as they created a labyrinth of red tape,  
5 lost documents, and erroneous information, and then they started  
6 foreclosure proceedings while borrowers and their families were  
7 in the middle of applying for a loan modification.

8 (b) The California Legislature responded with a  
9 first-in-the-nation Homeowner Bill of Rights (HBOR), which  
10 requires mortgage servicers to provide borrowers a fair and  
11 transparent process, a single point of contact, and the opportunity  
12 to finish applying for a loan modification before foreclosure  
13 proceedings can start. HBOR stabilized families, neighborhoods,  
14 and local communities by slowing down indiscriminate  
15 foreclosures.

16 (c) Now, however, district attorneys and legal aid organizations  
17 are reporting an increasing number of cases in which mortgage  
18 servicers use a loophole in HBOR to foreclose on certain  
19 homeowners—people who survive the death of a borrower and  
20 have an ownership interest in the home but are not named on the  
21 mortgage loan. Most often, the “survivor” is the borrower’s spouse  
22 and is over 65 years of age.

23 (d) When the surviving widow or widower, domestic partner,  
24 children, or other heirs attempt to obtain basic information about  
25 the loan from the servicer, they face the same kind of barriers and  
26 abuses—and, finally foreclosure—that convinced the Legislature  
27 to pass HBOR.

28 (e) Home ownership is the primary avenue for most Americans  
29 to build generational wealth. Indiscriminate foreclosures on  
30 surviving heirs destroy a family’s ability to build for its financial  
31 future. Foreclosures also exacerbate the racial wealth gap—and  
32 overall wealth inequality—in society, and force seniors who want  
33 to “age in place” into the overheated rental market instead, with  
34 devastating health impacts.

35 (f) Surviving heirs deserve the same transparency and  
36 opportunity to save their home as HBOR gave the original  
37 borrower. This act would stem a disturbing nationwide trend and  
38 help keep widows and widowers, children, and other survivors in  
39 their homes—without requiring mortgage servicers to do anything  
40 more than they already do for other homeowners.

1 (g) It is the intent of the Legislature that this act work in  
2 conjunction with federal Consumer Financial Protection Bureau  
3 servicing guidelines.

4 SEC. 2. Section 2920.7 is added to the Civil Code, to read:

5 2920.7. (a) Upon notification by someone claiming to be a  
6 successor in interest that a borrower has died, and where that  
7 claimant is not a party to the loan or promissory note, a mortgage  
8 servicer shall not record a notice of default pursuant to Section  
9 2924 until the mortgage servicer does both of the following:

10 (1) Requests reasonable documentation of the death of the  
11 borrower from the claimant, including, but not limited to, a death  
12 certificate or other written evidence of the death of the borrower.  
13 A reasonable period of time shall be provided for the claimant to  
14 present this documentation, but no less than 30 days from the date  
15 of a written request by the mortgage servicer.

16 (2) Requests reasonable documentation from the claimant  
17 regarding the status of that claimant as a successor in interest in  
18 the real property. A reasonable period of time shall be provided  
19 for the claimant to present this documentation, but no less than 90  
20 days from the date of a written request by the mortgage servicer.

21 (b) (1) Upon receipt by the mortgage servicer of the reasonable  
22 documentation of the status of a claimant as successor in interest  
23 and that claimant's relation to the real property, that claimant shall  
24 be deemed a "successor in interest."

25 (2) There may be more than one successor in interest. A  
26 mortgage servicer shall apply the provisions of this section to  
27 multiple successors in interest in accordance with the terms of the  
28 loan and federal and state laws and regulations.

29 (3) Being a successor in interest under this section does not  
30 impose an affirmative duty on a mortgage servicer or alter any  
31 obligation the mortgage servicer has to provide a loan modification  
32 to the successor in interest. If a successor in interest assumes the  
33 loan, he or she may be required to otherwise qualify for available  
34 foreclosure prevention alternatives offered by the mortgage  
35 servicer.

36 (c) Within 10 days of a claimant being deemed a successor in  
37 interest pursuant to subdivision (b), a mortgage servicer shall  
38 provide the successor in interest with information in writing about  
39 the loan. This information shall include, at a minimum, loan  
40 balance, interest rate and interest reset dates and amounts, balloon

1 payments if any, prepayment penalties if any, default or  
2 delinquency status, the monthly payment amount, and payoff  
3 amounts.

4 (d) A mortgage servicer shall allow a successor in interest to  
5 either: *to:*

6 ~~(1) Assume the deceased borrower's loan to the extent permitted~~  
7 ~~under state and federal law and the terms of the loan.~~

8 ~~(2) Where a successor in interest of an assumable loan also~~  
9 ~~seeks a foreclosure prevention alternative, simultaneously apply~~  
10 ~~to assume the loan and for a foreclosure prevention alternative that~~  
11 ~~is offered by the loan lender or applicable loss mitigation rules. If~~  
12 ~~the successor in interest qualifies for the foreclosure prevention~~  
13 ~~alternative, the servicer shall allow the successor in interest to~~  
14 ~~assume the loan to the extent permitted under state and federal law~~  
15 ~~and the terms of the loan.~~

16 *(1) Assume the deceased borrower's loan, subject to an*  
17 *evaluation of the creditworthiness of the successor in interest,*  
18 *consistent with the appropriate investor requirements and*  
19 *guidelines.*

20 *(2) If the successor in interest qualifies for the foreclosure*  
21 *prevention alternative, assume the loan subject to an evaluation*  
22 *of the creditworthiness of the successor in interest consistent with*  
23 *the appropriate investor requirements and guidelines.*

24 *(3) If a successor in interest of an assumable loan also seeks a*  
25 *foreclosure prevention alternative, simultaneously apply to assume*  
26 *the loan and for a foreclosure prevention alternative that is offered*  
27 *by the mortgage loan servicer.*

28 (e) (1) ~~(A)~~ A successor in interest ~~who meets the criteria in~~  
29 ~~subparagraph (B)~~ shall have all the same rights and remedies as a  
30 borrower under subdivision (a) of Section 2923.4 and under  
31 Sections 2923.6, 2923.7, 2924, 2924.9, 2924.10, 2924.11, 2924.12,  
32 2924.15, 2924.17, 2924.18, and 2924.19. For the purposes of  
33 Section 2924.15, "owner-occupied" means that the property was  
34 the principal residence of the deceased borrower and is security  
35 for a loan made for personal, family, or household purposes.

36 ~~(B)~~ For the purposes of subparagraph (A), a successor in interest  
37 shall meet all of the following criteria:

38 ~~(i) Be eligible to assume a deceased borrower's outstanding~~  
39 ~~mortgage loan.~~

1     ~~(ii) Wish to apply for a foreclosure prevention alternative in~~  
2     ~~connection with the deceased borrower's loan.~~

3     ~~(iii) Be either of the following:~~

4     ~~(I) The spouse, child, or grandchild of the deceased borrower.~~

5     ~~(II) A person who occupies the property as his or her principal~~  
6     ~~residence at the time of the deceased borrower's death.~~

7     (2) If a trustee's deed upon sale has not been recorded, a  
8     successor in interest may bring an action for injunctive relief to  
9     enjoin a material violation of subdivision (a), (b), (c), or (d). Any  
10    injunction shall remain in place and any trustee's sale shall be  
11    enjoined until the court determines that the mortgage servicer has  
12    corrected and remedied the violation or violations giving rise to  
13    the action for injunctive relief. An enjoined entity may move to  
14    dissolve an injunction based on a showing that the material  
15    violation has been corrected and remedied.

16    (3) After a trustee's deed upon sale has been recorded, a  
17    mortgage servicer shall be liable to a successor in interest for actual  
18    economic damages pursuant to Section 3281 resulting from a  
19    material violation of subdivision (a), (b), (c), or (d) by that  
20    mortgage servicer if the violation was not corrected and remedied  
21    prior to the recordation of the trustee's deed upon sale. If the court  
22    finds that the material violation was intentional or reckless, or  
23    resulted from willful misconduct by a mortgage servicer, the court  
24    may award the successor in interest the greater of treble actual  
25    damages or statutory damages of fifty thousand dollars (\$50,000).

26    (4) A court may award a prevailing successor in interest  
27    reasonable attorney's fees and costs in an action brought pursuant  
28    to this section. A successor in interest shall be deemed to have  
29    prevailed for purposes of this subdivision if the successor in interest  
30    obtained injunctive relief or damages pursuant to this section.

31    (5) A mortgage servicer shall not be liable for any violation that  
32    it has corrected and remedied prior to the recordation of the  
33    trustee's deed upon sale or that has been corrected and remedied  
34    by third parties working on its behalf prior to the recordation of  
35    the trustee's deed upon sale.

36    (f) Consistent with their general regulatory authority, and  
37    notwithstanding subdivisions (b) and (c) of Section 2924.18, the  
38    Department of Business Oversight and the Bureau of Real Estate  
39    may adopt regulations applicable to any entity or person under

1 their respective jurisdictions that are necessary to carry out the  
2 purposes of this section.

3 (g) The rights and remedies provided by this section are in  
4 addition to and independent of any other rights, remedies, or  
5 procedures under any other law. This section shall not be construed  
6 to alter, limit, or negate any other rights, remedies, or procedures  
7 provided by law.

8 (h) Except as otherwise provided, this act does not affect the  
9 obligations arising from a mortgage or deed of trust.

10 (i) For purposes of this section, all of the following definitions  
11 shall apply:

12 (1) “Notification of the death of the mortgagor or trustor” means  
13 provision to the mortgage servicer of a death certificate or, if a  
14 death certificate is not available, of other written evidence of the  
15 death of the mortgagor or trustor deemed sufficient by the mortgage  
16 servicer.

17 (2) “Mortgage servicer” shall have the same meaning as  
18 provided in Section 2920.5.

19 (3) “Reasonable documentation” means copies of the following  
20 documents, as may be applicable, or, if the relevant documentation  
21 listed is not available, other written evidence of the person’s status  
22 as successor in interest to the real property that secures the  
23 mortgage or deed of trust deemed sufficient by the mortgage  
24 servicer:

25 (A) In the case of a personal representative, letters as defined  
26 in Section 52 of the Probate Code.

27 (B) In the case of devisee or an heir, a copy of the relevant will  
28 or trust document.

29 (C) In the case of a beneficiary of a revocable transfer on death  
30 deed, a copy of that deed.

31 (D) In the case of a surviving joint tenant, an affidavit of death  
32 of the joint tenant or a grant deed showing joint tenancy.

33 (E) In the case of a surviving spouse where the real property  
34 was held as community property with right of survivorship, an  
35 affidavit of death of the spouse or a deed showing community  
36 property with right of survivorship.

37 (F) In the case of a trustee of a trust, a certification of trust  
38 pursuant to Section 18100.5 of the Probate Code.

39 (G) In the case of a beneficiary of a trust, relevant trust  
40 documents related to the beneficiary’s interest.

(4) “Successor in interest” means a natural person who provides the mortgage servicer with notification of the death of the mortgagor or trustor and reasonable documentation showing that the person is ~~any of the following:~~ *the spouse, domestic partner, joint tenant as evidenced by grant deed, parent, grandparent, adult child, adult grandchild, or adult sibling of the deceased borrower, who occupied the property as his or her principal residence within the last six continuous months prior to the deceased borrower’s death.*

~~(A) The personal representative, as defined in Section 58 of the Probate Code, of the mortgagor’s or trustor’s estate.~~

~~(B) The devisee, as defined in Section 34 of the Probate Code, or the heir, as defined in Section 44 of the Probate Code, of the real property that secures the mortgage or deed of trust.~~

~~(C) The beneficiary, as defined in Section 5608 of the Probate Code, on a revocable transfer on death deed.~~

~~(D) The surviving joint tenant of the mortgagor or trustor.~~

~~(E) The surviving spouse of the mortgagor or trustor if the real property that secures the mortgage or deed of trust was held as community property with right of survivorship pursuant to Section 682.1.~~

~~(F) The trustee of the trust that owns the real property that secures the mortgage or deed of trust or the beneficiary of that trust.~~

(j) This section shall apply to first lien mortgages or deeds of trust that are secured by owner-occupied residential real property containing no more than four dwelling units. “Owner-occupied” means that the property was the principal residence of the deceased borrower.

(k) *Any mortgage servicer, mortgagee, or beneficiary of the deed of trust, or an authorized agent thereof, who complies with the relevant provisions regarding successors in interest of Part 1024 of Title 12 of the Code of Federal Regulations (12 C.F.R. Part 1024), known as Regulation X, and Part 1026 of Title 12 of the Code of Federal Regulations (12 C.F.R. Part 1026), known as Regulation Z, including any revisions to those regulations, shall be deemed to be in compliance with this section.*

(l) *This section shall not apply to a successor in interest who is engaged in a legal dispute over the property that is security for*

1 *the borrower's outstanding mortgage loan and has filed a claim*  
2 *raising this dispute in a legal proceeding.*

3 ~~(k)~~

4 (m) This section shall not apply to a depository institution  
5 chartered under state or federal law, a person licensed pursuant to  
6 Division 9 (commencing with Section 22000) or Division 20  
7 (commencing with Section 50000) of the Financial Code, or a  
8 person licensed pursuant to Part 1 (commencing with Section  
9 10000) of Division 4 of the Business and Professions Code, that,  
10 during its immediately preceding annual reporting period, as  
11 established with its primary regulator, foreclosed on 175 or fewer  
12 residential real properties, containing no more than four dwelling  
13 units, that are located in California.

14 SEC. 3. The provisions of this act are severable. If any  
15 provision of this act or its application is held invalid, that invalidity  
16 shall not affect other provisions or applications that can be given  
17 effect without the invalid provision or application.